

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

APRIL TERM, 1902.

No. 1196.

152

No. 8, SPECIAL CALENDAR.

THEOBALD J. TALTY, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED MARCH 28, 1902.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

THEOBALD J. TALTY, Plaintiff in Error, }
vs. } No. 1196.
THE DISTRICT OF COLUMBIA. }

a In the Police Court of the District of Columbia, February Term, 1902.

DISTRICT OF COLUMBIA }
vs. } No. 217,758. Information for Violation
THEOBALD J. TALTY. } of Act for the Prevention of Smoke.

Be it remembered that in the police court of the District of Columbia, at the city of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 In the Police Court of the District of Columbia.

THE DISTRICT OF COLUMBIA }
vs. } No. —.
THEOBALD J. TALTY. }

Bill of Exceptions.

At the trial of this case the District of Columbia produced as a witness in its behalf FRANK WOLLARD, who testified substantially as follows: I am employed in the office of the health department of the District of Columbia and have been assigned to duty as an inspector of smoke. On February 12, 1902, I was out looking for violations of the smoke law, and while standing at Eleventh and F streets northwest I watched the smokestack of the Raleigh hotel, which is situated at the corner of Twelfth street and Pennsylvania avenue, for the period of forty minutes. I saw dense black or gray smoke coming from the smokestack from 4.31 to 4.32 o'clock p. m. and from 4.47 to 4.52 o'clock p. m. I went to the hotel thereafter and called for Mr. T. J. Talty and told him what my employment was. I asked him if he was the manager of the hotel, and he replied that he was. I asked him if he had control of the employees in said building and looked after the business carried on there, and he replied that he did. Thereupon I told him that I would have to prosecute him in the police court.

2 On cross-examination witness admitted that there were two smokestacks and five or six chimneys attached to the Raleigh hotel; that a smokestack belonging to the Star building was within fifteen feet of the smokestack on the hotel, but that he felt quite positive that the smoke observed by him came from the smokestack attached to the Raleigh hotel.

Thereupon the District announced its case as closed.

Thereupon counsel for the defendant moved the court to instruct the jury to return a verdict of not guilty on the ground that the District had failed to prove the charge against the defendant as laid in the information, and that the evidence produced was insufficient to hold the defendant, but the court refused to instruct the jury as requested, and the defendant, by *its* counsel, duly excepted to said ruling.

Thereupon counsel for defendant moved the court to instruct the jury to return a verdict for defendant on the ground that the evidence produced by the District showed that the defendant was not the occupant of the Raleigh hotel within the meaning of the law, but was simply present as the employee or agent of the owners and occupants and had no control of the matter of the purchasing of coal used in said building or of the emission of smoke therefrom, but the court refused to instruct the jury as requested, and the defendant, by his counsel, duly excepted to said ruling.

3 Thereupon the defendant testified in his own behalf in substance as follows: The Columbia Hotel Company, a corporation, is the owner and occupant of the Raleigh hotel, and I am employed and paid by said corporation to look after its business at said hotel. The officers of said corporation are the following: Martin F. Morris, president; Edward J. Stellwagen, vice-president; Walter S. Harban, secretary, and Thomas M. Gale, treasurer. Said corporation has a board of directors, and the conduct of the business of the hotel is directly under the supervision and control of a board of managers, who are members of the board of directors, and I receive my orders from them. As manager of said hotel, I have general supervision of the business and control of the help, but I have nothing whatever to do with the purchasing of coal used in said building and have no control over the furnaces used in said building. The contracts for coal are made by the board of managers, and the engineer orders coal directly from the party contracted with, whenever he sees fit to do so, and the treasurer of the corporation pays for the same. The hotel has three hundred and fifty-six rooms in it. The treasurer of the corporation pays my salary as well as the salary of the engineer and other employees. The corporation keeps its book-keeper, in the office of the hotel.

Thereupon, to further maintain the issues on behalf of defendant, one MICHAEL HOGAN, a witness of lawful age, was produced, and testified substantially as follows: I am the chief engineer at the Raleigh hotel and am employed and paid by the Columbia Hotel Company,

3. I might add a general instruction as to the question of reasonable doubt, to which, I suppose, there will be no objection. If you have a reasonable doubt from the evidence of defendant's guilt, you will render a verdict of not guilty.

The defendant then and there excepted to the first and second instructions of the court, and said exceptions, together with each of the exceptions taken during the course of said trial, were duly noted upon the minutes of the court, and notice was given of the intention of the defendant to apply for a writ of error.

In witness whereof, at the request of the defendant's counsel, the presiding justice signs this bill of exceptions this 18th day of March, A. D. 1902.

(Signed)

CHARLES F. SCOTT,
Judge Police Court, D. C.

7 In the Police Court of the District of Columbia, February Term, 1902.

DISTRICT OF COLUMBIA	}	No. 217,758. Information for <i>Violation of Act for Prevention of Smoke.</i>
vs.		
THEOBALD J. TALTY.		

Defendant arraigned February 24th, 1902; plea, not guilty; jury trial demanded.

Mar. 12.—Verdict, guilty.

Mar. 13.—Judgment, guilty; sentence, to pay a fine of fifty dollars, and in default to be committed to the workhouse for the term of sixty days.

March 13.—Exceptions. Exceptions taken to rulings of court on matters of law, and notice given by defendant in open court of his intention to apply to a justice of the Court of Appeals, D. C., for a writ of error.

[Rubber stamp illegible.]

Edward J. Stellwagen, surety.

Mar. 18.—Bill of exceptions filed, settled, and signed.

Mar. 19.—Writ of error received from Court of Appeals.

MARCH 27TH, 1902.

I hereby certify, under the seal of this court, that the foregoing is a true copy of the record of the proceedings had in the police court in the above-entitled case.

[Seal Police Court of District of Columbia.]

JOSEPH HARPER,
Dep. Clerk, Police Court, Dist. of Columbia.

a corporation, which is the owner and occupant of said building and is carrying on the hotel business there. My salary is always paid by check signed by Thomas M. Gale, treasurer of said corporation. The contract for coal used in said hotel is made by the board of managers of said corporation, and Mr. J. Maury Dove now
4 supplies all coal used at said hotel at the direction of the board of managers. I order coal from Mr. Dove whenever, in my judgment, it is necessary. We have been burning nutmeg coal at said hotel for the past three years. Nutmeg coal is a hard coal, is smokeless, and is one of the best coals in the market. I know that nutmeg coal was being used at the hotel on February 12th, 1902, and I know that no dense black or gray smoke comes from the use of nutmeg coal; that there was a small pile of soft coal in the bins at the time of the alleged offense, but it had not been used for three months.

This was all the evidence offered.

Thereupon counsel for the defendant renewed their motion to have the jury instructed to return a verdict of not guilty for the same reasons as set forth in the motion made at the close of the District's testimony, but the court overruled said motion, and the defendant, by his counsel, then and there duly excepted.

Thereupon counsel for the defendant requested the court to rule as matter of law that the evidence offered failed to support the charge made in the information, and that the defendant should be discharged, but the court refused to make said ruling; to which refusal counsel for the defendant then and there excepted.

Thereupon counsel for the defendant moved the court to grant on behalf of defendant the following instruction: The jury are instructed that if they find that the Columbia Hotel Company on the 12th day of February, 1902, was the occupant of the buildings known as the Raleigh hotel, and that the defendant Talty was not the occupant of said buildings, then the verdict should be "not guilty," but the court refused to so instruct the jury, and the defendant, by his counsel, then and there excepted.

5 Thereupon the court, in lieu of the instructions asked for by the defendant's counsel, instructed the jury as follows:

1. If the jury believe from the evidence that Theobald J. Talty, named as defendant in the information in this case, was on the 12th day of February, 1902, the general manager of the buildings situated at Twelfth street and Pennsylvania avenue, northwest, in the city of Washington, District of Columbia, described in the evidence as the Raleigh hotel, then in contemplation of law he was the occupant of said buildings.

2. If the jury believe from the evidence that said building was situated as aforesaid, to which there was attached a smokestack and chimney used in connection with a certain stationary engine, steam boiler, and furnace in said building, and that on said 12th day of February, 1902, the said defendant caused and allowed the emission into the open air within said District from the said smokestack and chimney thick and dense black or gray smoke, then their verdict should be guilty.

8 UNITED STATES OF AMERICA, ss :

The President of the United States to the Honorable Charles F. Scott, judge of the police court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said police court, before you, between The District of Columbia, plaintiff, and Theobald J. Talty, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Richard H. Alvey,
Seal Court of Appeals, Chief Justice of the said Court of Appeals,
District of Columbia. the 19th day of March, in the year of
our Lord one thousand nine hundred and
two.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by—

SETH SHEPARD,

*Associate Justice of the Court of Appeals of
the District of Columbia.*

9 In the Police Court of the District of Columbia, February
Term, A. D. 1902.

THE DISTRICT OF COLUMBIA, ss :

Andrew B. Duvall, Esq., city solicitor for the District of Columbia, by James L. Pugh, Jr., Esq., assistant city solicitor for the District of Columbia, who for the said District prosecutes in this behalf in his proper person; comes here into court, and causes the court to be informed and complains that Theobald J. Talty, late of the District of Columbia aforesaid, on the 12th day of February, in the year A. D. nineteen hundred and two, in the District of Columbia aforesaid, and in the city of Washington, being then and there the occupant of a certain building, to wit, the building situated at 12th — and Pennsylvania avenue northwest, in the city aforesaid, in the District aforesaid, to which said building there is attached a smoke-

stack and chimney used in connection with a certain stationary engine, steam boiler, and furnace in said building, the said Theobald J. Talty, as such occupant, did then and there unlawfully cause, permit, and allow the emission into the open air from the said smokestack and chimney, situate as aforesaid, certain thick and dense black and gray smoke, which was then and there a public nuisance, contrary to and in violation of an act of Congress for the prevention of smoke in the District of Columbia, and for other purposes, approved February 2, 1899, and constituting a law of the District of Columbia.

ANDREW B. DUVALL, Esq.,
City Solicitor for the District of Columbia,
 By J. L. PUGH, JR.,
Assistant City Solicitor for the District of Columbia.

Personally appeared F. L. Wollard this 18th day of February, A. D. 1902, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

[Seal of Police Court of District of Columbia.]

JOSEPH HARPER,
Deputy Clerk of the Police Court for the District of Columbia.

[Endorsed:] Col. —. No. 217,758. Information. District of Columbia vs. Theo. J. Talty. 3, 13, 50, 60. Notice of ap. for W. E. Puy. Violation of act for the prevention of smoke. Colbert. Witnesses: F. L. Wollard, office; J. T. D.; d'ft, Michael D. Hogan. Filed Feb. 24, 1902. Joseph Y. Potts, clerk police court, D. C.

10 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss:

I, Joseph Y. Potts, clerk of the police court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 9, inclusive, to be true copies of originals in cause No. 217,758, wherein The District of Columbia is plaintiff and Theobald J. Talty defendant, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, — the city of Washington, in said District, this 28 day March, A. D. 1902.

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

Endorsed on cover: District of Columbia police court. No. 1196. Theobald J. Talty, plaintiff in error, vs. The District of Columbia. Court of Appeals, District of Columbia. Filed Mar. 28, 1902. Robert Willett, clerk.

